



COURT NEWS

Study Bolsters Drug Court Claims

BLAINE CORREN

California's drug courts are effective in improving lives and reducing drug use and criminal offenses, according to a recent statewide report.

"Drug and alcohol abuse play a major role in the majority of criminal cases that come before our courts," says Chief Justice Ronald M. George. "This study shows that drug courts are helping the justice system and the public by decreasing drug use, improving lives, and protecting communities."

STUDY FINDINGS

The report is a result of the Drug Court Partnership Act (DCPA) of 1998, which gave the State Department of Alcohol and Drug Programs (ADP) and the Judicial Council the task of collaboratively funding 34 California counties' drug courts and evaluating the courts' effectiveness. The study addressed data collected between January 2000 and September 2001. Among

other results, the *DCPA Final Report* shows that:

► On average, the arrest rate of participants who have completed drug court is 85 percent lower during the two years after admission than it was during the two years prior to entry.

► On average, the conviction rate of participants who have completed drug court is 77 percent less during the two years after admission than the conviction rate of those entering the program during the two years prior to entry.

► On average, the incarceration rate of participants who have completed drug court is 83 percent less during the two years after admission than the incarceration rate of those entering the program during the two years prior to entry.

► After completing drug court, many participants had retained or regained child custody or established visitation with their children and become current in their child support payments.

► Ninety-six percent of drug tests conducted on participants during the program were negative.

► Ninety-five percent of babies born to participant mothers during the program were drug-free.

"I'm not surprised by the survey results, because I've never had a doubt that drug courts work," says Superior Court of Butte County Judge Darrell Stevens, who oversees the drug court in his county and chairs the Judicial Council's Collaborative Justice Courts Advisory Committee. "We create an environment where defendants have frequent contact with the court and are held accountable for their actions. These courts are also successful because many agencies are working together in a collaborative effort to treat the whole person, not just address the offense."

The report notes that the study's results are even more remarkable considering the histories of the participants. Drug



Superior Court of Orange County Judge David A. Thompson (center) and drug court staff members welcomed graduates and their families during a recent graduation ceremony. *Photo: Courtesy of the Superior Court of Orange County*

court participants have long histories of drug use, with 70 percent having used drugs for more than five years. They also have significant arrest histories, as well as low educational achievement and high unemployment.

Continued on page 6

IN THIS ISSUE

DRUG COURT STUDY	1
NEW CIVIL CASE MANAGEMENT RULES	1
MESSAGE FROM THE CHIEF JUSTICE	2
ARBITRATOR ETHICS STANDARDS	3
NEW CAPITAL CASE PROCEDURES	3
IN THE NEWS	4
HR DATA SYSTEM	4
PILOT FINANCIAL SYSTEM FOR COURTS	4
FACILITIES CONSULTING	5
COUNTY PROFILE	5
APPELLATE COURT E-FILING	5
INCREASED ACCESS TO CHILDREN	6
JUDICIAL ELECTION RESULTS	7
IMPROVING JURY SERVICE	8
Q&A WITH JUDGE ROBERT A. DUKES	10
CRIME AND PUNISHMENT	11
PROP. 36 CONFERENCE	11
JUDICIAL ETHICS	12
EDUCATION & DEVELOPMENT	13
RESOURCES	13
COURT BRIEFS	14
MILESTONES	14
JUDICIAL APPOINTMENTS	15
GETTING IN TOUCH	15
CALENDAR	16

Managing Civil Litigation

CURTIS E.A. KARNOW

Effective July 1, 2002, California's courts will operate their case management systems under new rules of court. The new rules plainly respond to the mandate that judges must take a hands-on, active role in the management of pretrial litigation. However, courts retain the authority to determine whether appearances are needed for limited cases or in any specific case.

NEW RULES

The new rules were developed by the Judicial Council's Civil and Small Claims Advisory Committee and its Case Management Subcommittee. They address both council and legislative requirements that judges follow a uniform statewide procedure for active case management. (Gov. Code, § 68607.) Specifically, the new rules:

- Require a conference within 180 days of the filing of the complaint, integrating the old arbitration status conference;
- Provide a uniform case management statement form;
- Replace old rules concerning at-issue memoranda and the active case list;
- Set uniform time periods and procedures for initial maneuvers on service of pleadings and defaults; and
- Provide that the case management order directs the entire

course of litigation after the case management conference.

CONTRAST OF OLD AND NEW MODELS

As trial lawyers' work has increasingly moved from the courtroom to focus more on document review and depositions, the court's direct authority to control litigation has diminished. In the past, case management hearings—a tool designed for overall court supervision—often have been no more than cursory trial-setting procedures, mechanically handled by a commissioner who has no other role in the case. In many counties, the hearing is dispensed with altogether. In short, the role of the court has been truncated.

Correspondingly, the classic approach to discovery launches into an infinite sea of discoverable information and methods. Gradually, over the life of the case and far from the scrutiny of the court, lawyers refine the issues until, having combed through a landfill of dross, they present the judge at summary judgment, or the jury at trial, with the golden gems of admissible, relevant evidence focused on the truly disputed legal or factual issues. Perhaps this process can be visualized as a funnel: wide as all outdoors at the beginning and narrowing at the end. The court's role comes very, very late in the game.

This classic litigation model can also be thought of as a cauldron: after a fierce swirl of discovery, writs, and other pretrial procedures, the truth precipitates out at trial—a golden nugget distilled in the cauldron of cross-examination and mutual access to all possibly pertinent information. In this context, case management means setting the case for trial, hoping the looming cost (and risk) will force settlement.

By contrast, *proactive case management is indistinguishable from management of the discovery process*. The court plays a

Continued on page 7

Back to the Juror Box



The judicial system is predicated on the constitutional right to be judged by a jury of one's peers. The system cannot work without the cooperation and dedication of citizens who report for jury service. On pages 8 and 9, learn what California's courts are doing to make jury service more manageable and relevant for all Californians. *Photo: Jason Doiy*



Chief Justice
Ronald M.
George

MESSAGE FROM THE CHIEF JUSTICE

State of the Judiciary

Chief Justice Ronald M. George delivered the State of the Judiciary address to a joint session of the state Legislature on March 12 in Sacramento. He focused his remarks on the California courts' recent accomplishments in the areas of electronic access, community outreach, alternative dispute resolution, multijurisdictional practice, death penalty procedures, and court facilities. Following are excerpts from his address.

I have described in years past many of the other innovations undertaken to improve public access to the courts, and I want to bring you up to date on some recent developments.

ELECTRONIC ACCESS TO COURT RECORDS

Last December, the Judicial Council expanded public access to electronic trial court records while protecting the right of privacy. The balanced plan adopted by the council was the product of a multiyear study that broadly surveyed a range of interests and considered the implications of adopting different approaches.

Questions involving the scope of access to information on the Internet permeate our society. This extraordinary tool has enormous potential—but not all of it is beneficial. The courts are carefully weighing the needs of the public and the interests of litigants. Disclosure that may seem reasonable in one context may have far different implications in another.

The Judicial Council's adoption of rules for electronic public access to court-record information places our state on the cutting edge of the debate. Other jurisdictions look to us as a model in this, as in so many other areas. We will be carefully monitoring the impact of the rules that have been adopted to see whether changes are appropriate.

COMMUNITY OUTREACH

Using a more familiar electronic medium, the California Supreme Court has permitted some recent oral arguments to be televised publicly. And we have taken our show on the road, as well. Last year, in addition to our regular oral argument sessions in San Francisco, Sacramento, and Los Angeles, we met in special session in Orange County, as we have done in previous years in San Diego, Riverside, and Ventura. A session will be held in Fresno this fall.

Attendance at these proceedings is not limited to those present within the courtroom. The courts and the bar in Orange County carefully planned the event in cooperation with our court and invited local schools to participate in a number of ways. Students were rotated in and out of the courtroom, and the session was televised by closed circuit to auxiliary locations, where teachers encouraged discussion about the process and the issues.

In Fresno, we are planning to televise the arguments up and down the Central Valley on the local public access station. In cooperation with local school officials, the broadcast of one of the morning sessions will be made an optional part of the curriculum. Local judges and bar members will be asked to assist in classrooms and will be provided with basic materials on the cases to be argued.

Some of our Courts of Appeal have undertaken similar programs of their own. This exposure to the courts in operation, along with guided discussions to help students gain insight into the process, is yet another vital step in educating young people about the courts, their role in our society, and why our nation's legal and judicial process is so important to their lives. Similarly, trial courts all over California are engaging in outreach programs, on an ongoing basis, with students at every level in their communities. . . .

IMPROVING DEATH PENALTY CASE PROCEDURES

The California Supreme Court has been evaluating its handling of death penalty appeals and has taken a number of steps to maintain the high level of legal representation generally afforded those defendants in this state while reducing unwarranted periods of delay in the process. Supreme Court staff have been meeting regularly with the entities charged with providing legal assis-

tance to defendants on death row in order to solve the difficult problem of the large number of such individuals lacking counsel for an extended period of time following their conviction.

We already have made several internal changes at the Supreme Court to streamline and improve our processing of capital cases, and the defense entities have been working on the problem from their end by improving training and conducting more outreach to the defense community to attract attorneys willing to handle these difficult cases. In addition, you enabled us to hire a new group of five attorneys who will form the nucleus of a capital case central staff—headed by a very experienced member of the court's staff—that initially will assist the court in handling motions and capital-case-related habeas corpus petitions.

COURT FACILITIES

I now want to turn to a subject of increasing concern to the judicial branch—courthouse facilities. As part of the 1997 Trial Court Funding Act, you created the Court Facilities Task Force, composed of representatives from all three branches of government. As part of the task force study, experts visited every court location in the state to report on facility conditions and needs.

The sponsoring legislation recognized the need to get a process under way for the transition from county to state ownership of the 451 courthouse facilities in the state of California—facilities that are owned by the counties but support programs that are the responsibility of the state. The current governance structure is unworkable. The counties are responsible for facilities and staff authorized before 1998, and the state for those authorized after that year. This split in responsibilities guarantees that future needs will remain unmet unless a change occurs. . . .

Unfortunately, far from being temples of justice, many of the courthouses in our state pose dangers to those who come to them for justice. Security is inadequate, sometimes making a court appearance a hazardous experience for litigants and witnesses. Some courthouses have no assembly room for jurors, who must wait in hallways. Or—as I observed during the visits I made to the courts in every county my first year as Chief Justice—sometimes jurors are seated on concrete steps in stairwells, waiting to perform their civic duty. At a courthouse located in the city of San Bernardino, the threat of collapse during a moderate earthquake hangs over the heads of all who work in or visit the facility. Basic maintenance has been deferred in many locations, creating safety and health risks. And often, inadequate wiring makes using modern technology a challenge.

What message is conveyed about the value we place on justice when the structures in which it is rendered lack basic amenities? Our judicial system does not need, want, or expect palaces. But it does deserve facilities that are secure, well maintained, and adequate to serve the public's needs. . . .

Senator Martha Escutia has introduced Senate Bill 1732, which we hope will serve as a vehicle for ensuring responsibility for adequate courthouse facilities in California. Our goal is to lay the groundwork this year for a transfer of responsibility to the state in fiscal year 2004–2005. We have had preliminary discussions with your leadership and with the Governor's Office about the need to focus on this long-term objective. We look forward to working with you to achieve a practical and affordable means of providing the people of our state with the court facilities they require and deserve.

The judicial branch is moving ahead on a number of fronts and is using all the tools and resources available to us. As, however, I have found in the time I have been privileged to serve as a judge in the courts of this state—a period of service that next month will reach the 30-year mark—the greatest asset of the judicial branch is the people who work in and with the courts: judicial officers, court administrators, and staff. Their creativity, enthusiasm, intelligence, and commitment have been the most vital factor in the recent successes of the judicial branch in improving and expanding its service to the public.

Take
Note

For the full
text of the
Chief Justice's
State of the

Judiciary address, visit the
California Courts Web site
at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov/reference/soj031202.htm)
/reference/soj031202.htm.

Judicial Council Action

Council Approves New Arbitrator Standards

At its April 19 meeting, the Judicial Council adopted comprehensive ethics standards for contractual arbitrators in California. The new guidelines, the first of their kind in the country, are designed to protect the integrity and fairness of the arbitration process.

Senate Bill 475 (Escutia) required that the council adopt ethics standards for contractual arbitrators by July 1, 2002. In response, the Administrative Office of the Courts' (AOC) Office of the General Counsel (OGC) developed standards in conjunction with the 19-member Judicial Council Blue Ribbon Panel of Experts on Arbitrator Ethics. Appointed by Chief Justice Ronald M. George in November, the panel was charged with reviewing and providing input into the standards.

KEY PROVISIONS

Among other directives, the new ethics standards:

- Establish arbitrators' overarching ethical duty to act in a manner that upholds the integrity and fairness of the arbitration process.

- Increase arbitrators' disclosure obligations by:

- (a) Expanding an arbitrator's duty to make a reasonable inquiry into disclosure matters;

- (b) Extending the required disclosures about the relationships of arbitrators' family members to include those of domestic partners;

- (c) Extending the required disclosures about prior service to include service as a mediator or another dispute resolution neutral;

- (d) Requiring an arbitrator to disclose whether he or she or an immediate family member is or was (within the previous two years) an employee, an expert witness, or a consultant for a party or a lawyer in the current arbitration;

- (e) Requiring arbitrators to disclose membership in organizations that practice invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation; and

- (f) Expanding to all consumer arbitrations the requirement that arbitrators disclose information about a provider organization's relationship with the parties. (Because of the time needed to comply with this rule and impending legislation, this

provision is effective January 1, 2003.)

- Restrict an arbitrator's acceptance of subsequent employment or professional relationships (including subsequent arbitrations) involving a party or a lawyer in the current arbitration.

- Restrict an arbitrator's acceptance of gifts, bequests, favors, or honoraria (during the arbitration and for two years after the arbitration concludes) from any person or entity whose interests are reasonably likely to come before the arbitrator.

The Judicial Council directed AOC staff to seek comments on these standards after they take effect and to continue to study the matter as necessary.

MEDIATOR STANDARDS

At its meeting, the council also adopted mandatory statewide Standards of Conduct for Mediators in Court Connected Mediation Programs for Civil Cases.

The new rules address voluntary participation and self-determination, confidentiality, impartiality and conflicts of interest, competence, quality of the mediation process, compensation, and marketing. For supe-

rior courts that make lists of mediators available to litigants or that recommend, select, appoint, or compensate mediators in general civil cases, the rules establish procedures for handling complaints against those mediators. They authorize courts to reprimand mediators, remove them from the courts' panels or lists, or otherwise prohibit them from receiving future mediation referrals from the court if they fail to comply with the new standards of conduct.

The AOC is developing educational materials to inform court personnel, mediators, and litigants of the mediators' obligations under the new rules. It will also assist courts in implementing the standards of conduct and in establishing complaint procedures.

OTHER ACTIONS

- In other actions, the council:

- Adopted a rule of court (effective July 1) that establishes that the primary duty of subordinate judicial officers (SJOs) is to perform subordinate judicial duties, but that permits trial court presiding judges to assign SJOs as temporary judges when a shortage of judges makes that necessary.

- Made the AOC responsible for developing guidelines on the design of new trial court facilities and gave itself authority to review and adopt such guidelines. ■

Court News Wins Top Honors

In April the Administrative Office of the Courts was honored at the State Information Officers Council (SIOC) awards luncheon in Sacramento for *Court News*, the agency's bi-monthly newsmagazine for court leaders. SIOC, an organization of government public information professionals, annually recognizes "excellent communication efforts among state agencies in California." *Court News* has won several awards from the group in prior years, and this year it walked away with the gold award for excellence in the news-magazine category.

Supreme Court Improves Handling of Capital Appeals

The California Supreme Court has created a new unit to assist it in considering death penalty cases. It has also given additional payment options to capital counsel and increased training opportunities for attorneys representing death row inmates.

NEW CAPITAL STAFF

The new Capital Central Unit staff will help the court address the habeas corpus proceedings pending before it. The unit comprises a director, Dennis Peter Maio, and five staff attorneys.

Mr. Maio served as a judicial attorney for California Supreme Court Justice Stanley Mosk from 1985 to 2001 and as a law clerk from 1984 to 1985.

The new unit, which began work in April, is one of three Supreme Court central staffs; the other two are the Civil and Criminal Central Units.

PAYMENT PROCEDURES

Working in collaboration with appellate defense groups, the court amended its guidelines to provide additional payment options for court-appointed counsel

in death penalty appeals and related habeas corpus proceedings.

The previous fixed-fee payment option for death penalty counsel provided for six payments at fixed stages in the course of the proceedings. But these cases often take considerable time, and several attorneys had difficulty managing their cash flows because the setting of the fixed stages was not always within their control.

The new payment schedule permits the court to advance attorneys portions of those fixed payments after they complete specified tasks. The court foresees that this option will allow counsel to obtain partial payment at more frequent intervals and at the same time will assist the court in ensuring that counsel are progressing steadily in their cases. Counsel representing a defendant on appeal and in the related habeas corpus proceedings can now get paid in 11 installments instead of 6.

TRAINING

To encourage counsel to take classes related to habeas corpus representation, the court is expanding its reimbursement pay-

ments for habeas corpus training programs. It is funding additional training sessions for attorneys who are recommended by the Habeas Corpus Resource Center and the California Appellate Project.

COLLABORATIVE APPROACH

The institution of the court's new policies concerning death penalty cases follows a series of consultations among court staff and the Habeas Corpus Resource Center, the Office of the State Public Defender, and the California Appellate Project. For the past two years, court staff members and the leaders of these three defense entities have met regularly to discuss changes that will assist the court in recruiting and appointing additional qualified counsel to represent defendants on death row. The court also sought public comment on proposed amendments and responded to input that the defense entity leaders solicited from focus groups throughout the state. The groups discussed issues that affect counsel's willingness and ability to seek appointment in death penalty cases.

- To review the court's death penalty procedures, visit www.courtinfo.ca.gov/courts/supreme/dpenalty.htm/. For more information, contact Dennis Peter Maio, 415-865-7095. ■



Dennis Peter Maio heads up the Supreme Court's new Capital Central Unit staff.